CASE SUMMARY

Complaint against the Housing Department for (a) impropriety in handling the complainant’s request for a credit of 3 years’ waiting time in respect of his application for public housing and (b) failure to give him a written reply in response to his request

The Complaint

The complainant had been a public rental housing (PRH) tenant who was displaced from his tenancy upon divorce in August 1993. He made a fresh application for public housing in 1996. Later, on learning that former PRH tenants who were displaced from their tenancies upon divorce could be given a credit of waiting time up to 3 years when they re-applied for public housing, he requested the Housing Department (HD) to grant him a credit of waiting time. He accused HD of failing to follow up his case properly and refusing his request unreasonably. Feeling aggrieved, the complainant lodged a complaint with this Office.

Information Provided by the Housing Department

2. Under HD’s current policy, if a couple in PRH tenancy is divorced, priority would be given to the party with custody of children to remain in the PRH accommodation. If the displaced divorcee has difficulties in finding accommodation, the Department would consider offering him an interim housing unit in the New Territories. A person thus displaced, if eligible to register on the Single Person Waiting List (SPWL), could be granted a credit of waiting time equivalent to the length of his former tenancy up to a maximum of 3 years. According to HD’s departmental guidelines, divorcees who are displaced from their public housing tenancies should be advised to register on the SPWL through the office of the estate where he has previously resided. The estate office would vet the application for the credit of waiting time, verify relevant tenancy details and refer the application to the Applications Section for consideration. Normally, if the application is not referred by the estate office or if the applicant is not single, the Applications Section would not grant a credit of waiting time.

3. The complainant’s ex-wife was the head of household of a PRH flat. Upon her divorce from the complainant, she was granted custody of their 3 sons by the Court in August 1993. Under HD’s policy, she was therefore allowed to keep her PRH tenancy. The complainant accordingly moved out of the PRH flat and applied for his name to be deleted from the tenancy in February 1994.

4. In July 1997, the complainant applied under the ordinary families category for public housing for himself and his daughter from his present marriage. It was not until November 1998 that he made a written application

to the Applications Section of HD for a credit of waiting time on grounds of change of marital status and deletion from public housing tenancy. In view of the absence of a divorce certificate and the estate office's referral, the Applications Section rejected his application in writing in February 1999.

5. In May 1999, the complainant telephoned the estate office to enquire for the first time about the credit of waiting time. As particulars of his in situ tenancy had already been changed, the estate office advised him to submit a written application. In July 1999, the complainant approached the estate office again. He was told that as his name had already been deleted from PRH tenancy for several years and his application was not referred by the estate office, special endorsement of the estate office and consent of the Applications Section had to be obtained before his request for a credit of waiting time would be granted. The Housing Manager of the estate interviewed the complainant and received his written application in September 1999. After looking into the matter, the Housing Manager decided to refer his application to the Applications Section. In view of the complainant's housing need, the Applications Section exercised discretion to grant him a credit of 3 years' waiting time and issued a written notification to him in September 1999.

Observations and Opinions

Complaint Point (a)

6. The complainant applied to the Applications Section of HD in November 1998 for a credit of waiting time in respect of his current application for public housing for himself and his daughter from his present marriage, on the grounds that he had been displaced from his PRH tenancy upon divorce. Having examined the information provided by HD as well as the existing policy and procedures on the credit of waiting time, this Office was of the view that had the Applications Section stated clearly in its reply why the complainant was not eligible for a credit of 3 years' waiting time and advised him to approach the estate office, he could have a clear picture of his circumstances and this complaint could have been avoided. We considered that the complaint arose from the application made unilaterally by the complainant's ex-wife to delete his name from the tenancy upon divorce. As he had simply signed on the application form and did not request to see HD staff to put forward an application for public housing or other housing problems, HD had practically no chance to inform him that he would be eligible for a credit of 3 years' waiting time should he re-apply for public housing through the SPWL. Therefore, he should also assume partial responsibility. Having considered the above circumstances, this Office concluded that complaint point (a) was **partially substantiated.**

Complaint Point (b)

7. As to the complainant's allegation that HD had failed to give him a written reply, we have ascertained, after examination of the files provided by HD, that HD had given him a written reply in February 1999 in response to his request for a credit of waiting time made in November 1998. In the circumstances, this Office concluded that complaint point (b) was **unsubstantiated.**

8. All points considered, The Ombudsman concluded that this complaint was **partially substantiated.**

Recommendations

9. This Office was pleased to note that improvement measures had been taken by the estate office concerned to invite divorced couples to attend interviews to ensure that they were aware of the housing arrangements and the criteria of the credit of 3 years' waiting time specified in paragraph 2 above. The Ombudsman had also made the following two recommendations to the Director of Housing with a view to further improving the quality of service of the Department –

(a) to consider stipulating in its departmental guidelines that in handling cases of deletion of tenancy upon divorce, estate offices are required to interview the outgoing divorcee and inform him in writing of the housing arrangements and the criteria of the credit of waiting time specified in paragraph 2 above; and

(b) with regard to the processing of applications for the credit of waiting time, to consider adding a note in the Refusal Notice to explain the reasons for refusal, remedial actions that can be taken by the applicants and the appeal channels available.

Response from the Director of Housing

10. The Director of Housing had accepted our views in this report. The Department's response to the two recommendations in paragraph 9 above was as follows –

(a) HD agreed to amend its Management Branch Instructions to reflect the arrangements proposed by our Office as set out in paragraph 9(a) above;

(b) The Applications Section and Registration & Civil Service Unit had issued guidelines requiring its staff to contact the office of the estate in which an applicant who was displaced upon divorce used to live, in order to clarify his status and eligibility when he applied to the Applications Section direct for registration on the SPWL and the credit of waiting time.

Conclusion

11. The Ombudsman was pleased to note that HD had responded positively to this complaint and taken appropriate measures to improve the quality of its service.

Office of The Ombudsman
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